

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

WINFRED FORKNER

PETITIONER

VS.

CIVIL ACTION NO: 5:05-cv-162-DCB-MTP

CLIFTON KAHN, Warden, and  
JIM HOOD, Attorney General

RESPONDENTS

ORDER

This cause is before the Court on Petitioner's Motion Pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure [docket entry no. 69]. Petitioner argues that his judgment of conviction rendered July 21, 2008 in the Circuit Court of Wilkinson County, Mississippi is void. This argument fails to challenge a defect in the integrity of the habeas proceedings, and therefore Petitioner's Rule 60(b) motion is in reality a habeas corpus application. Gonzalez v. Crosby, 545 U.S. 524, 530-32 (2005) (citing 28 U.S.C. § 2244(b)); see also Dunlap v. Litscher, 301 F.3d 873, 876 (7th Cir. 2002). The application is successive because it attacks the validity of his conviction and sentence, which the Court addressed in his previous habeas claim. Before the Court can consider a successive habeas petition, it must receive authorization from the Fifth Circuit Court of Appeals. 28 U.S.C. § 2244(b)(3)(A) (1996). IT IS THEREFORE HEREBY ORDERED THAT Petitioner's Motion Pursuant to Rule 60(b)(4) is DISMISSED.

Furthermore, because the Court considers Petitioner's Rule 60(b) Motion a successive habeas petition, it is required to determine whether a certificate of appealability ("COA") should issue. See Ochoa Canales v. Quarterman, 507 F.3d 884, 888 (5th Cir. 2007) ("28 U.S.C. § 2253 provides that a COA is required to appeal 'the final order in a habeas corpus proceeding.'"). A district court grants a COA if reasonable jurists would "debat[e] whether the petition states a valid claim of the denial of a constitutional right" or "debat[e] whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). There can be no debate that Petitioner's Motion is properly construed as a successive habeas corpus petition. IT IS THEREFORE HEREBY ORDERED THAT a certificate of appealability is DENIED.

SO ORDERED this the 2nd day of June 2015.

/s/ David Bramlette  
UNITED STATES DISTRICT JUDGE